IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION No: 1168 of 2005

Between:

M/s Vardhaman Plywood & Glass, D.No. 22-2-78,

Cloth Bazar, Guntur- 522 003, Rep. by its Proprietor

Mr. Vikram Kumar, S/o Phoolchandji.

..... PETITIONER

AND

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1 The Assistant Commercial Tax Officer (Int), Chittoor

Division, Chittoor.
2 The Commercial Tax Officer, Lalapet Circle, Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction, more appropriately one in he nature of writ of mandamus declaring impugned notice dated 22-1-2005 issued by the 1st respondent as illegal, unjustified and contrary to the provisions of law and consequently declare the detention order dated 18-1-2005 issued by the 1st respondent detaining the consignment bearing No. AP36U 4469 as also illegal and arbitrary.

Counsel for the Petitioner: MR.B.SRINIVAS

Counsel for the Respondents: SPL GP FOR TAXES

The Court at the admission stage made the following:

ORAL ORDER: **(per MHSA,J.)**

Heard learned counsel for respective parties.

The petitioner questioned the detention order passed by the first respondent in this writ petition. The reasons stated in the detention order are that the goods have been undervalued with the intention to evade the payment of tax on the suppressed value. A show cause notice has also been issued calling upon the petitioner/dealer to pay tax of Rs.19,883/- at 15% of the suppressed purchase value of Rs.1,32,548/- and to offer security towards penalty at the rate of two times of the tax sought to be evaded. Objections have been called for against the said proposals.

The action impugned in the instant writ petition is sought to be justified by the respondents by submitting that the action proposed is under Section 28(A) of the Andhra Pradesh General Sales Tax Act (for short ' APGST Act').

As a notice has been issued calling upon the dealer to show cause, we are not inclined to go into the merits of the contentions raised with respect to the show cause notice, as it would be open to the petitioner to raise all such contentions of fact and law as may be open to it before the first respondent.

However, insofar as release of goods is concerned, we are of the view that no power is conferred under Section 28(A) of the APGST Act to collect penalty. However, as proceedings have been initiated under that provision we do not wish to dilate further on this aspect of this matter. Interest of justice, in our view, would be served, if the petitioner is directed to pay a sum of Rs.19,882/- (Rupees nineteen thousand eight hundred and eighty two only) demanded as tax without prejudice to his rights and contentions in the pending proceedings and upon such payment the goods be directed to be realsed.

Accordingly, the instant Writ Petition is disposed of with a direction that if the petitioner deposits Rs.19,882/-, the first respondent shall release the goods to the petitioner forthwith. This order shall not preclude the first respondent from proceeding with the enquiry in accordance with law. No costs.

M.H.S. Ansari, J.

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T.CH. Surya Rao, J.

1st February, 2005

Note: Order by priority basis.

B/o.

Js.

To

1 The Assistant Commercial Tax Officer (Int), Chittoor

Division, Chittoor.
2 The Commercial Tax Officer, Lalapet Circle, Guntur.

3 2 CCs to Special G.P. for Taxes, High Court Buildings,

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